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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/567,985	02/10/2006	Masao Horike	39647	7732
116	7590	10/14/2008	EXAMINER	
PEARNE & GORDON LLP 1801 EAST 9TH STREET SUITE 1200 CLEVELAND, OH 44114-3108			KIRSCH, ANDREW THOMAS	
ART UNIT	PAPER NUMBER			
4159				
MAIL DATE		DELIVERY MODE		
10/14/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/567,985	<b>Applicant(s)</b> HORIKE, MASAO
	<b>Examiner</b> ANDREW T. KIRSCH	<b>Art Unit</b> 4159

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-8 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-8 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 10 February 2006 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
 

Paper No(s)/Mail Date \_\_\_\_
- 4) Interview Summary (PTO-413)
 

Paper No(s)/Mail Date \_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_

**DETAILED ACTION**

***Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "18UE" (pg. 15, line 6). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

2. The abstract of the disclosure is objected to because it exceeds 150 words in length. Correction is required. See MPEP § 608.01(b).

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

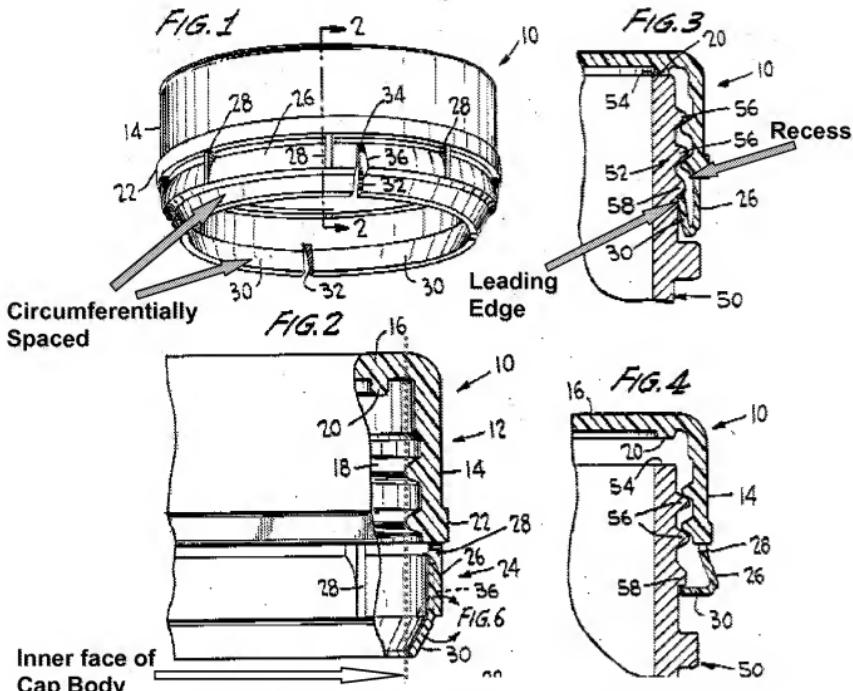
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 3, 4, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,796,770 (Begley hereinafter).

5. In re claim 1, with reference to Figs. 1-4 below, Begley discloses:

A container cap comprising a crown-shaped cap body (12) to be screwed onto a container and cap opening proof indication means (24) formed provided at a lower edge (14) of said cap body (12) and having no part left on a neck part of said container after said cap opens said container (column 4, lines 25-33), characterized in that said cap opening proof indication means comprises a plurality of indication pieces (26, 30) extending from said lower edge of said cap body and a bridge (28) to join the adjacent indication pieces and to be broken due to relative displacement of said adjacent indication pieces when said cap should open said container and a flap (30) provided at a portion of at least one of said adjacent indication pieces in a manner where said flap is able to be bended (col. 4, line 15) and having a leading edge (see Fig. 3) to be engaged with a protrusion stripe engagement portion (58) on a lower portion of said neck part of said container and in that said indication piece adjacent to said indication piece with said flap is provided with flap protrusion prevention to prevent said flap developed when said cap opens said container from protruding from an inner face of said cap body (see Fig. 2).



Figs. 1-4 of U.S. Patent No. 4,796,770 (Begley hereinafter)

6. Note that the closure of Begley inherently includes protrusion prevention in the that initial biasing of the flaps (30) as seen in Fig. 2 prevent them from protruding from an inner face of the cap body. Begley mentions that after the first opening of the closure, they remain in the non-protruding condition during subsequent resealing (column 4, lines 25-40).

7. In re claim 2, with reference to Figs. 1-4 above, Begley discloses the claimed invention including wherein said flap protrusion prevention is so formed as to prevent said leading edge (see Fig. 3 above) of said flap. It can clearly be seen that the inherent prevention due to initial biasing (described above) prevents the leading edge of the flap, as the leading edge is attached to the biased flap (30).

8. In re claim 3, with reference to Figs. 1-4 above, Begley discloses the claimed invention including wherein said indication piece (26) with said flap (30) and said indication piece (26) adjacent to said former indication piece form one indication means unit and the adjacent indication means units are provided in a manner spaced circumferentially (see Fig. 1 above).

9. In re claim 4, with reference to Figs. 1-4 above, Begley discloses the claimed invention including wherein said indication piece (26) adjacent to said indication piece with said flap (30) is disposed on both sides of said indication piece with said flap (30) (see Fig. 1).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. Claims 5, 6, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Begley as applied to claim 4 above, and further in view of U.S. Patent No. Re.32,879 (Wright et al. hereinafter).

13. In re claim 5, with reference to Figs. 1-4 above, Begley discloses the claimed invention as of the limitations described above.

14. Begley fails to disclose wherein said flap protrusion prevention comprises small width formation portion formed on the opposite faces of said indication pieces on both sides of said indication piece with said flap toward the direction where the opposite faces approach each other.

15. However, with reference to Figs. 1-3 below, Wright et al. discloses a tamper evident closure system which includes a small width formation portions (See Fig. 3) formed on the opposite faces of indication pieces (26, 40).

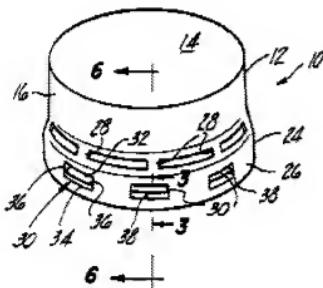


Fig-1

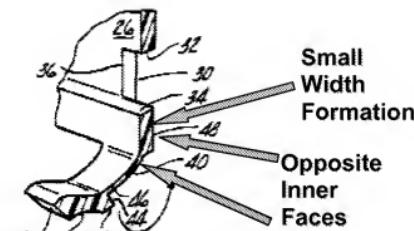


Fig-2

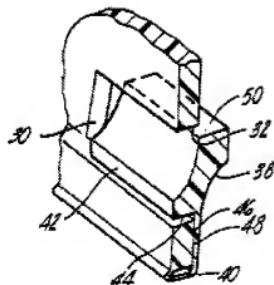


Fig-3

Figs. 1-3 of U.S. Patent No. Re.32,879 (Wright hereinafter)

16. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the closure structure of Begley utilizing the teaching of Wright et al. for the purposes of maintaining the flap in an outward

orientation. Such a modification would have allowed for easier clearing of the threads and other neck formations on the container during subsequent resealing of the container. Although the tamper evident structure of Wright et al. is substantially different in that it is formed for maintaining the flaps in the pre-tamper condition, it would have required only routine skill in the art to modify the structure to maintain the flaps in the open, post-tampering position in a manner analogous to that of the instant application.

17. In re claim 6, with reference to the Figures above, Begley in view of Wright et al. discloses the claimed invention including wherein said small width formation portion of said flap protrusion prevention comprises a thinner piece (40) extending integrally from the opposite inner sides of said both side indication pieces (38, 40).

18. In re claim 7, with reference to the Figures above, Begley in view of Wright et al. discloses the claimed invention including wherein said small width formation portion (see Fig. 3) of said flap protrusion prevention has an inclination face (34, 48) inclined downward and outward and said corresponding flap has an inclination face (44, 46) to be slippery moved along said inclination face of said flap protrusion prevention.

19. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Begley as applied to claim 1 above, and further in view of U.S. Patent No. 4,759,456 (Kusz hereinafter).

20. In re claim 8, with reference to Figs. 1-4 above, Begley discloses the claimed invention including wherein said indication piece (26) with said flap (30) has a recess (see Fig. 3) into which said flap is contained.

21. Begley fails to disclose that the flap is contained so that the flap never protrudes inside of said inner peripheral face of said cap body (12) when said flap is superposed on said corresponding indication piece in a state where said flap is bended.

22. However, with reference to Figs. 5 and 7 below, Kusz discloses a tamper evident closure for a container in which the flap is contained in an analogous recess and never protrudes from the inner surface of the cap while in the bended configuration.

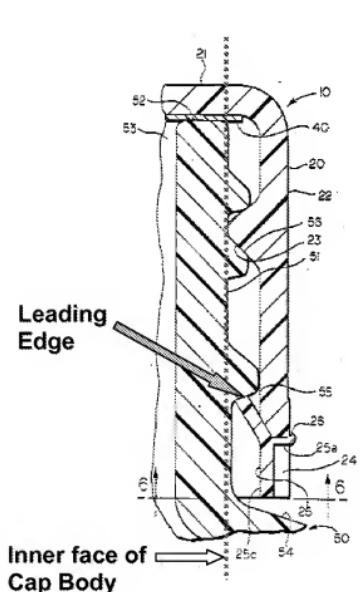


FIG. 5

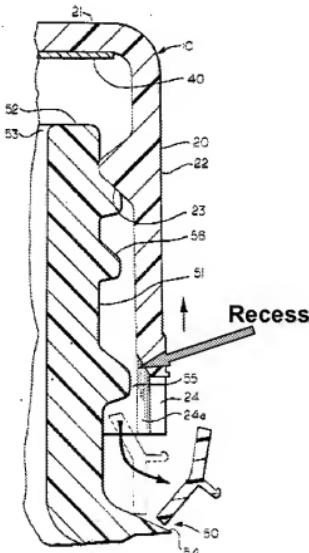


FIG. 7

Figs. 5 and 7 of U.S. Patent No. 4,579,456 (Kusz hereinafter)

23. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the tamper evident closure of Begley with the recess orientation and flap location of Kusz. Such a modification would have allowed for simpler initial closing of the closure, as the Begley reference mentions that the leading edge slides over the bead and neck formations (col. 3, lines 54-56), whereas the flap of Kusz deflected inwards prior to the first sealing (col. 4, lines 24-30).

***Conclusion***

24. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 4,308,969 to Heisler et al. discloses a tamper indicating closure structure that leaves no part on the container body after removal.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW T. KIRSCH whose telephone number is (571)270-5723. The examiner can normally be reached on M-F, 8am-5pm, off alt. Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, George Nguyen can be reached on 571-272-4491. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrew T. Kirsch/

Examiner, Art Unit 4159

/Quang T Van/  
Primary Examiner, Art Unit 3742